



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,966	08/17/2001	Brian W. Adkins	114300.2200	1822

30734 7590 05/01/2002

BAKER + HOSTETLER LLP  
WASHINGTON SQUARE, SUITE 1100  
1050 CONNECTICUT AVE. N.W.  
WASHINGTON, DC 20036-5304

EXAMINER

JACKSON, ANDRE K

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 05/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	09/930,966	Applicant(s)	ADKINS ET AL.
Examiner	Andre' K. Jackson	Art Unit	2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_ is/are allowed.  
6) Claim(s) 1-22 is/are rejected.  
7) Claim(s) \_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.  
12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.  
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.  
15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10,12,17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard.

Regarding claim 10, Howard discloses an “Electric incubator” which has a means for monitoring a level of fluid (9) and a means for adjusting the fluid level (10).

Regarding claim 12, Howard discloses an “Electric incubator” which has a monitoring means that is mechanical (9).

Regarding claim 19, Howard discloses an “Electric incubator” which has a mechanical fluid level indicator that is visibly monitored by visibly measuring a maximum and minimum liquid level of the incubator and adjusting the level in the incubator (Figure 1).

Regarding claim 17, Howard discloses an “Electric incubator” which has a visible sight window on the front face (Figure 1).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,2,3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard.

Regarding claim 1, Howard discloses an "Electric incubator" which has a liquid level gauge (9). A scale disposed on the liquid level guage is not disclosed. However, one of ordinary skill in the art would have been inclined to place a scale onto the gauge to have an accurate measurement of liquid present in the incubator.

Regarding claim 2, Howard discloses an "Electric incubator" which has a liquid level gauge (9) that is mounted on the exterior of the incubator. However, the gauge is not mounted on the front face as recited in the claims. To mount the gauge (9) of Howard on the front of the incubator would have been obvious to

one of ordinary skill in the art at the time of invention. The orientation of the gauge is based on accessibility, functionality etc.

Regarding claim 3, Howard discloses an "Electric incubator" which does not have a scale on the incubator. However, one of ordinary skill in the art would have been inclined to place a scale onto the incubator for a better reading and accurate measurement of liquid present in the incubator.

Regarding claim 8, Howard discloses an "Electric incubator" which does have a liquid level gauge that is visible when the incubator is closed.

5. Claims 4-7,9,11,14-16,18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard in view of the admitted prior art.

Regarding claim 4, Howard discloses an "Electric incubator" which is not a water jacket incubator. The admitted prior art (Figure 1) discloses an incubator that is a water jacket incubator. The skilled artisan in the art would have been motivated to modify Howard to include a water jacket because it is well known in the art that having a water jacket provides a more constant and uniform temperature within the incubator environment as shown by the admitted prior art.

Regarding claim 5, Howard discloses an "Electric incubator" which has a liquid level gauge (9) that is tubular (Figure 1).

Regarding claim 6, Howard discloses an “Electric incubator” which does not have a liquid level gauge connected to a water jacket within the incubator. The admitted prior art (Figure 1) discloses incubator that does have a liquid level gauge connected to the water jacket. It would have been obvious to the skilled artisan to modify Howard to include a liquid level gauge connected to the water jacket as taught by the admitted prior art.

Regarding claim 7, Howard discloses an “Electric incubator” which does not provide a scale full and fill markings. However, one of ordinary skill in the art would have been inclined to place scale markings on the gauge of Howard to determine the precise amount of liquid remaining within the water jacket.

Regarding claim 9, the orientation of the feed tube is considered to be an obvious design choice within the preview of one of ordinary skill in the art. Note Prior Art Figure 2 shows a feed tube (21) disposed in the water jacket.

Regarding claim 11, Howard discloses an “Electric incubator” which does not have a means for mounting the fluid level monitoring device flush into a front face of an incubator. The admitted prior art (Figure 1) discloses a lamp and audible alarm indicator disposed flush on the front face of an incubator. Therefore, it would have been within the preview of one of ordinary skill in the art to have a means to mount a fluid level

monitoring device flush into a front face of an incubator. It is a common practice in the art to have indicators flush in the front face of an incubator to keep the indicators free from obstruction.

Regarding claim 14, Howard discloses an “Electric incubator” which is not a water jacket incubator. The admitted prior art (Figure 1) discloses an incubator that is a water jacket incubator. The skilled artisan would have been motivated to modify Howard to include a water jacket because it is well known in the art that having a water jacket provides a more constant and uniform temperature within the environment as shown by the admitted prior art.

Regarding claim 15, Howard discloses an “Electric incubator” which does not have a scale on the incubator. However, one of ordinary skill in the art would have been inclined to place a scale onto the incubator for a better reading and accurate measurement of the liquid present in the incubator.

Regarding claim 16, Howard discloses an “Electric incubator” which does not have a fill hole and a drain lock. However, the admitted prior art (Figure 1) discloses incubator that does have a fill hole (15) and a drain lock (13). Therefore, to modify Howard to include a fill hole and drain lock would have been within the preview of one of ordinary skill in the art as taught by the admitted prior art.

Regarding claim 18, Howard discloses an “Electric incubator” which does not have a monitoring means that includes maximum and minimum liquid level indicators. However, one of ordinary skill in the art would have been inclined to place maximum and minimum liquid level indicators to determine an accurate amount of liquid remaining within the water jacket.

Regarding claim 20, Howard discloses an “Electric incubator” which is not a water jacket incubator. However, the admitted prior art (Figure 1) discloses incubator that is a water jacket incubator. The skilled artisan within the art would have been motivated to modify Howard to include a water jacket because it is well known in the art that having a water jacket provides a more constant and uniform temperature within the environment as shown by the admitted prior art.

Regarding claim 21, Howard discloses an “Electric incubator” which does not have a scale on the incubator. However, one of ordinary skill in the art would have been inclined to place a scale onto the incubator for a better reading and accurate measurement of liquid present in the incubator.

Regarding claim 22, Howard discloses an “Electric incubator” which does not provide a scale full and fill markings. However, one of ordinary skill in the art would have been inclined to place scale markings on the gauge to determine the precise amount of liquid remaining within the water jacket.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Fri. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are N/A for regular communications and N/A for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

A.J. *A.J.*  
April 18, 2002

*Hezron S. Williams*  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800